

1
2
3
4
5 **UNITED STATES DISTRICT COURT**
6 **NORTHERN DISTRICT OF CALIFORNIA**
7 **SAN JOSE DIVISION**
8

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 ERIK DAVID HANKS,

13 Defendant.
14

Case No. 16-cr-00400-BLF-1

**ORDER RE BENCH TRIAL ON
STIPULATED FACTS**

15 Defendant Erik David Hanks is charged in a single-count indictment with being a felon in
16 possession of a firearm in violation of 18 U.S.C. § 922(g)(1). *See* Indictment, ECF 4. On August
17 9, 2018, the Court denied Defendant's motion to suppress evidence seized from his person and his
18 vehicle on August 25, 2016. *See* Order Denying Motion to Suppress, ECF 60. The seized
19 evidence included the firearms he is charged with possessing. *See id.*

20 Following the ruling on the suppression motion, the parties then filed a joint request to
21 proceed by means of a stipulated facts bench trial, which request was approved by the Court on
22 October 12, 2018. *See* Stipulation and Order, ECF 65. The parties filed Joint Stipulations and
23 Waivers for Bench Trial on November 28, 2018. *See* Joint Stipulations and Waivers, ECF 66.
24 The Court conducted the stipulated facts bench trial on December 4, 2018.

25 For the reasons set forth below, the Court hereby finds that the stipulated facts establish
26 Defendant's guilt of the charged offense beyond a reasonable doubt. The Court therefore finds
27 Defendant GUILTY of Count 1 of the Indictment, charging Defendant with being a felon in
28 possession of a firearm in violation of 18 U.S.C. § 922(g)(1).

1 **I. WAIVER OF RIGHTS**

2 At the start of the hearing, the Court engaged in a colloquy with Defendant to ensure that
3 he understood the rights he waived by agreeing to a stipulated facts bench trial. The Court
4 confirmed with Defendant that he had seen the Indictment and discussed the charge with his
5 attorney, and that Defendant was satisfied with his attorney's representation. The Court also
6 explained in detail Defendant's right to a jury trial, including the rights to confront and cross-
7 examine witnesses, to testify (or decline to testify) and present evidence, and to a unanimous jury
8 verdict. Defendant stated that he understood and waived those rights. The Court finds that
9 Defendant's waiver of rights was voluntary, knowing, and intelligent.

10 The Court informed Defendant that he had not waived his right to appeal the Court's denial
11 of his motion to suppress evidence. Defendant's right to appeal the denial of the suppression
12 motion is expressly preserved in the parties' Joint Stipulations and Waivers for Bench Trial. *See*
13 Joint Stipulations and Waivers at 2, ECF 66.

14 **II. STIPULATED FACTS**

15 The Court requested that the Government's counsel read the stipulated facts into the
16 record. The Court noted that the Joint Stipulations and Waivers for Bench Trial filed on
17 November 28, 2018 indicated Defendant's agreement only by means of an electronic signature
18 ("/s/ Erik David Hanks"). *See* Joint Stipulations and Waivers at 4, ECF 66. The Court requested
19 that Defendant sign a copy of the Joint Stipulations and Waivers for Bench Trial by hand, which
20 he did in open court.

21 The Government's counsel then read the following stipulated facts into the record, which
22 the Court accepts and adopts:

23 (1) The elements of the charged offense, being a felon in possession of a firearm in
24 violation of 18 U.S.C. § 922(g)(1), are as follows: the defendant knowingly possessed a firearm;
25 the firearm had been shipped or transported from one state to another or between a foreign nation
26 and the United States; and at the time the defendant possessed the firearm, the defendant had been
27 convicted of a crime punishable by imprisonment for a term exceeding one year.

28 (2) At approximately 4:03 a.m. on August 25, 2016, San Jose Police Officers searched

1 Defendant and his vehicle at the Shell gas station located at 2180 Monterey Road, San Jose,
2 California.

3 (3) During the search of the vehicle, officers discovered a loaded Mossberg 12-gauge
4 shotgun bearing serial number V0326328, a loaded Charter Arms .38 caliber revolver bearing
5 serial number 12-06998, a loaded Rohm .38 caliber revolver with an obliterated serial number, and
6 various ammunition, including eleven 12-gauge shotgun shells and thirty-three .38 caliber rounds.

7 (4) Defendant knowingly possessed the firearms and ammunition discovered in his
8 vehicle on August 25, 2016.

9 (5) Each of the firearms identified above had been shipped or transported from one
10 state to another or between a foreign nation and the United States prior to their discovery in
11 Defendant's vehicle.

12 (6) Prior to August 25, 2016, Defendant had been convicted of the felony offense of
13 Aggravated Assault in violation of California Penal Code Section 245(a)(1), which is a crime
14 punishable by imprisonment for a term exceeding one year. Accordingly, at the time of the events
15 described above, it was unlawful under Title 18, United States Code, Section 922(g)(1), for
16 Defendant to possess any firearms or ammunition.

17 **III. COURT'S DETERMINATION OF GUILT**

18 The Court finds, beyond a reasonable doubt, that these facts prove each element of the
19 charged offense and that Defendant is GUILTY of Count 1 of the Indictment, charging Defendant
20 with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1).
21

22 Dated: December 4, 2018



23 BETH LABSON FREEMAN
24 United States District Judge
25
26
27
28